IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 42 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JAIN VINODKUMAR HARDAS

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Revision Application No. 42 of 2002

MR RJ GOSWAMI for Petitioners No. 1-2

MR KG SETH PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 01/02/2002

ORAL JUDGEMENT

#. Rule. Mr.K.G.Seth, learned APP waive service of rule on behalf of the State. By consent of the learned advocates for the parties this Revision Application has been taken up for hearing and final disposal.

#. The petitioners herein stand to a trial before the learned Special Judge appointed under the provisions of Essential Commodities Act, 1955 in Special Case No.4/2000. They submitted an application under Section 227 and 228 of the Criminal Procedure Code, 1973 (for short "the Code") for their discharge. Similar application was submitted by them in past also, that application was dismissed by the said court and, therefore, a Criminal Revision Application being Criminal Revision Application No.495/2000 was filed by them. This Court (Coram: D.C.Srivastav,J.) by order dated 28.6.2001 was pleased to direct the lower Court that since the matter was not disposed of on merits it should be disposed of on merits in accordance with law.

#. Thereafter fresh arguments were heard and after hearing the arguments the learned Special Judge passed an order on 31.12.2001 dismissing the said application Ex.11 of the present petitioners. The learned Special Judge found that the offences in question were under the Essential Commodities Act, 1955 and they were triable summarily and, therefore, the procedure provided for a summons triable case would be required to be followed for the trial of the said case. The learned Special Judge also found that in a summons triable case there is no provision for framing charge and, therefore, there is no question of discharge of the accused. Accordingly, the learned Special Judge dismissed the said application of the present petitioners.

#. Feeling aggrieved by the said order of the learned Special Judge, the petitioners have preferred this Revision Application under Section 397 read with 401 of the said Code. It is contended here that though there is no stage for framing of charge in summons triable case, the trial Court was required to apply its mind on the point as to whether there was ground to proceed against the petitioners even for the purpose of recording plea of the present petitioners, that this was not done by the trial Court and, therefore, the order of the trial Court is illegal and perverse and deserves to be set aside. The petitioners have, therefore, prayed that the present Revision Application be allowed and the above order of the trial Court be quashed and set aside.

#. During the course of hearing it has been noticed that the learned Special Judge has taken a stand that the accused persons can be discharged by the Court only in accordance with the mode provided under Sections 227 and 228 of the said Code. The learned Special Judge found

that the said procedure could be followed in a warrant triable case and not in a summons triable case and, therefore, the said application was dismissed.

#. It is true that in a summons triable case a formal charge is not required to be framed by the Judge presiding over a particular Court. However, under Section 251 of the said Code, in a summons case when the accused appears before the Court, the particulars and substance of offence is required to be stated to the accused and he is also required to be stated whether he wanted to admit the offence.

#. Therefore, without framing a formal charge, the Court is required to put to the accused person the particulars of offence or offences of which he is accused. This would necessarily mean that there should be some accusations against the accused person which may lead to some particular offence said to have been committed by the said accused. Even on reading the complaint or other materials on record if it is not possible to find that some offence has been committed by the accused concerned, then it cannot be said that there were accusations against the accused person which can be put to the accused for getting an answer as to whether he pleaded guilty to the said accusation. In other words, the complaint and other papers on record must prima facie disclose some offence. If no offence is made out, even prima facie, then there is no question of recording plea of the accused person in accordance with Section 251 of the said code. At the same time, upon reading the complaint and other materials on record if it is found that there is some case to proceed against the accused person, then in that event, accusations are required to be put to accused person and his answer is required to be recorded in accordance with Section 251 of the said Code. Here also sufficiency of evidence or material cannot be gone into. Even a bare reading of the complaint and materials supplied with the complaint can lead to a prima facie inference or conclusion as to whether or not there is some accusation against the accused for recording his plea. The plea is not required to be recorded if the complaint and other materials do not disclose any offence against the accused. In the present case, it appears that the learned Special Judge has not considered the above aspect of the case and has not considered as to whether there is prima facie case or some ground to proceed against the petitioners. The only approach of the learned Judge is that since there is no provision for framing of charge in a summons triable case, there is no question of discharge of the accused. I am of the

opinion that this is not a legal approval of the learned Special Judge. The learned Special Judge was required to consider the complaint and other materials in order to find out whether there is some prima facie case against the petitioners to proceed with the trial. Since, this aspect of the case has not been considered by the learned Special Judge his order cannot be treated to be legal.

#. Mr.K.G.Seth, learned APP was also unable to support the said order of the learned Special Judge. In that view of the matter, when the matter has not be disposed of on merits and in accordance with the above observations, the Revision Application is required to be allowed and the case is required to be remanded to the trial Court for deciding the matter afresh in accordance with law.

#. For the foregoing reasons this Criminal Revision Application is allowed. The order impugned is ordered to be set aside. The matter is remanded back to the trial Court for decision on the application of the petitioners in accordance with law and in light of the observation made hereinabove. Rule is made absolute to the above extent. D.S. is permitted.

( D.P. BUCH, J.)
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